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IN THE

SUPREME COURT OF THE UNITED STATES

LOCAL NO. 435 CONSTRUCTION & GENERAL LABORERS' UNION, AFL - CIO,

VS. CASE NO. [redacted]87

S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER and J. M. TAPPAN, DOING BUSINESS AS S. J. CURRY & COMPANY, A PARTNERSHIP.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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COMMERCIAL RECORDER, FORT WORTH, TEXAS—4-2-62—80

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IN THE

SUPREME COURT OF THE UNITED STATES

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS' UNION, AFL - CIO,

VS. CASE NO. .....

S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER and J. E. TAPPAN, DOING BUSINESS AS S. J. CURRY & COMPANY, A PARTNERSHIP.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF GEORGIA

TO THE HONORABLE EARL WARREN, CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF SAID COURT:

The petition of Local No. 438 Construction & General Laborers' Union, AFL - CIO, affiliated with Hod Carriers' Building & Common Laborers' Union of America, AFL - CIO, for the issuance of a Writ of Certiorari by the Supreme Court of the United States to review a decision and judgment rendered by the Supreme Court of the State of Georgia, respectfully shows:

1. Petitioner was the Defendant in Error in the Supreme Court of the State of Georgia in the case styled S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan, doing business as S. J. Curry & Company, a partnership, vs. Local 438, Construction & General Laborers' Union, AFL - CIO, case No. 21463. A decision adverse to your Petitioner was rendered by the said Court. The said decision is officially reported in 123 S.E., 2d 653.

2. The said decision was rendered by the Supreme Court of the State of Georgia on the 4th day of January, 1962. Judgment was entered by decree reversing the decision of the Superior Court of Fulton County, Georgia, on January 4th 1962.

3. Jurisdiction of this Court to review the judgment of the Supreme Court of Georgia by Writ of Certiorari is vested in this Court under 62 Stat., ~~922~~ 925 (3), 28 U.S.C.A. 1257(3).

4. The Supreme Court of the State of Georgia overruled the decision of the Superior Court of Fulton County, Georgia, and sustained the prayer of the Defendant herein and granted a temporary injunction against Petitioner, restraining Defendant herein, S. J. Curry & Company. (Exhibit 1 to this Petition.)

QUESTIONS PRESENTED FOR REVIEW

This Court is asked to review the judgment of the Supreme Court of the State of Georgia and to deter-

mine if the Supreme Court of the State of Georgia erred in the following particulars:

(a) In holding that while the picketing engaged in by the Petitioner was peaceful it was for an unlawful purpose and should have been restrained and enjoined.

(b) In finding that the evidence demanded a finding that the pickets were placed on the job for the purpose of forcing a violation of the State's Right To Work Law.

(c) In holding the picketing was for an unlawful purpose and clearly a violation of the provisions of Georgia Code Section 54-804 and Code Section 66-9906.

(d) In holding that it was illegal for the Petitioner to carry a placard in front of the construction job containing the statement: "S. J. Curry & Company, Inc., violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area. Construction & General Laborers' Union 438, AFL - CIO". The Court so held, notwithstanding the fact that the Court found that the legend carried upon said sign was true and that S. J. Curry & Company was not paying the prevailing wage in the area even though it had executed a contract with the City of Atlanta for said construction which contract contained the provision:

"Wages will conform with those being paid on similar types of work in the Atlanta area".

(e) In holding it unlawful for the Petitioner to publicize by means of peaceful picketing the fact that its own elected City Officials were not enforcing a contractual provision on a construction project being erected with their own tax money, the contractual provision being placed in the contract for the benefit of all labor including those carrying said placard.

(f) In holding that the Superior Court of Fulton County, Georgia, was in error in denying a temporary injunction and in holding that an injunction should issue restraining members of organized labor who were having their wages depressed by the failure of the City of Atlanta to enforce its contract provisions with the Defendant herein from exercising its freedom of speech by using the most effective means to bring to the attention of the general public and the employees who were working for less wages than their contract authorized to be paid them that the picketing persons' own elected Representatives, the Officials of the City of Atlanta, were, to the detriment of all labor, failing to enforce a contract on a project financed through the tax money of the citizens of the City of Atlanta, including those picketing.

(g) In granting said injunction said court deprived Petitioner in Certiorari of freedom of speech in violation of the 14th Amendment to the constitution of the United States.

(h) In granting said injunction, said court deprived Petitioner in Certiorari of rights protected by the National Labor Relations Act, Title 29, Section 157 of the United States Code Annotated.

(i) In granting said injunction said court assumes jurisdiction of a cause, the subject matter of which had been pre-empted by enactment of the National Labor Relations Act, Title 29, Section 157-158(b) of the United States Code Annotated.

CONSTITUTIONAL PROVISION INVOLVED

The 14th Amendment, Section 1, to the Constitution of the United States provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges of amenities of ctitzens of the United States; nor shall any state deprive any persor of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES WHICH ARE INVOLVED

Title 29, Section 157, United States Code Annotated:

"employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 158 (a)(3) of this title."

Title 29, Section 158(b), United States Code Annotated:

"it shall be an unfair labor practice for a labor organization or its agents:

"(1) To restrict or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title; Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employee in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"To cause or attempt to cause an employer to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to temper the periodic

dues and the initiation fees uniformly required as a condition acquiring or retaining membership;"

The Statute referred to by the Court in its opinion, Section 54-804 of the Code of the State of Georgia, is as follows:

"COMPELLING PERSONS TO JOIN, OR REFRAIN FROM JOINING, LABOR ORGANIZATION, OR TO STRIKE OR REFRAIN FROM STRIKING. — It shall be unlawful for any person, acting alone or in concert with one or more other persons to compel or attempt to compel any person to join or refrain from joining any labor organization, or to strike or refrain from striking against his will, by any threatened or actual interference with his person, immediate family, or physical property, or by any threatened or actual interference with the pursuit of lawful employment by such person, or by his immediate family. (Acts 1947, pp. 620, 621.)"

The Section of the Code of the State of Georgia to which the Supreme Court of Georgia made reference, being Section 66-9906, is as follows:

"UNLAWFULLY PREVENTING LABORERS, ETC., FROM PERFORMING DUTIES.— Any person or persons, who, by threats, violence, intimidation, or other unlawful means, shall prevent or attempt to prevent any person or persons from engaging in, remaining in, or performing the business, labor, or duties of any lawful

employment or occupation, shall be guilty of a misdemeanor. (Acts 1887, p. 107.)"

STATEMENT OF THE CASE

The undisputed evidence established that the City of Atlanta entered into a contract with the Defendant in Certiorari, S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan, doing business as S. J. Curry & Company, a partnership, for construction of a sewage disposal plant known as the South River Sewage Disposal Plant, located in the City of Atlanta, Georgia. It was stipulated that the Defendant in Certiorari during the twelve months immediately preceding the filing of this action purchased raw materials, equipment and supplies in a value in excess of $50,000.00, which was purchased and shipped from points beyond the State of Georgia to points within the State of Georgia. (Tr. page 7.) Said contract contained the following language: "Wages will conform with those being paid on similar types of work in the Atlanta area". (Tr. page 7.) It was undisputed that the Defendant was paying substantially less than the prevailing wage for such types of work in the Atlanta Area. (Tr. Exhibits E, F, G, H, I, J.) It was not disputed that no picketing resulted until six or seven months after a conference with Defendant in Certiorari and not until after the Petitioner made repeated and constant efforts to prevail upon the City of Atlanta to enforce its contract and to require the Defendant to pay the prevailing wage in the area. Several conferences were held with Mr. Jack Savage,

the City Attorney of the City of Atlanta, in an effort to have this contract enforced, and a hearing was held before the Board of Aldermen of the City of Atlanta in which the Petitioner presented its contention that the City should enforce its claim and it was undisputed that the Board of Aldermen entered an order stating: "After a lengthy discussion, this matter was referred to Executive Session where the Committee agreed that there is nothing that the City can legally do so as to make Curry *raise his pay scale*". (Emphasis supplied.) It was only after the constant meetings with the City Attorney and the hearing before the Board of Aldermen had proven without avail, and only after the Board of Aldermen had officially stated that there was nothing they would do to enforce the contract that the Petitioner herein placed a picket sign in front of the construction work being done by the Defendant, thereby advising the employees working for the Defendant and the General public that the Defendant in Certiorari was paying depressed wages in violation of its contract and the City of Atlanta was not enforcing its contract in requiring wages to be paid similar to those paid in the Atlanta area. Said picket sign read as follows: "S. J. Curry & Company, Inc., violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area. Construction & General Laborers' Union 438, AFL - CIO". (Tr. Exhibit E, pages 3, 4, 5; Exhibit F, page 3.) (Tr. pages 3, 4, 5.)

Defendant in Certiorari filed a petition in the Superior Court of Fulton County, Georgia, praying that the Superior Court of Fulton County, Georgia, issue temporary restraining order, temporary injunction and permanent injunction restraining the Petitioner from engaging in said picketing. The matter came on for hearing before the Honorable Claude D. Shaw, Superior Court Judge, on application for temporary restraining order, following which the said Judge denied the application for temporary restraining order. Thereupon, the matter was set for hearing upon temporary injunction, and on the 12th day of September, 1961, the matter came on for hearing before the Honorable Ralph H. Pharr, Superior Court Judge, on application for temporary injunction, at which time the evidence as hereinabove stated was fully presented, and the Honorable Ralph H. Pharr, exercising his equity discretion as Superior Court Judge, found that the Petitioner was engaging in picketing for the purpose of publicizing the fact that the Defendant in Certiorari was not paying the prevailing wage in the Atlanta area, in violation of its contract with the City of Atlanta. Said Judge found that the language upon said picket sign was true and that the Defendant herein was violating said contract and therefore that the Petitioner herein was exercising its freedom of speech by publicizing said fact and therefore said application for temporary injunction was denied.

The Defendant prayed an appeal to the Supreme Court of the State of Georgia, and argument upon said appeal was heard and Briefs filed, whereupon said

Court rendered its decision on the 4th day of January, 1962, which decision is attached to this Petition for Certiorari. Said decision held that the language upon the picket signs was true and that the wages being paid were not those conforming with those wages being paid in the Atlanta area and that said failure to pay said wages constituted a breach of contract, but notwithstanding said findings and the finding that the picketing was entirely peaceful at all times, the Court held that the Trial Court was in error in denying the application for temporary injunction and held that the application for temporary injunction should have been granted. On the 16th day of January 1962., remittitur issued by the Supreme Court of Georgia and judgment was entered overruling the decision of the Honorable Ralph H. Pharr, Judge of the Superior Court of Fulton County, Georgia, and granting the prayer for temporary injunction.

At the hearing, both in the Superior Court and the Supreme Court of the State of Georgia, Petitioner in Certiorari in oral argument and in brief before the Supreme Court of Georgia made the contention that to grant the prayers of the Petitioner in Certiorari as protected by the Fourteenth Amendment to the Constitution of the United States and Section 7 of the National Labor Relations Act, Title 29, Section 157 of the United States Code Annotated. The contention was similarly made that the subject matter of said cause had been preempted by the United States Government by enactment of the National La-

bor Relations Act, Title 29, Section 141 et seq. of the United States Code Annotated.

In reaching this rather surprising result, the Supreme Court of Georgia did the following things:

(1) Deprived the Petitioner of life, liberty or property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, in that said Court deprived the Petitioner of its freedom of speech to publicize by means of peaceful picketing the fact that Defendant in Certiorari was paying depressed wages in violation of its contract and Petitioner's own elected Officials, the Officials of the City of Atlanta, were not enforcing a contract entered into for the benefit of those persons working upon the project and for the benefit of the wage structure of all of labor within the Atlanta area, and that a project being constructed by the tax money of the citizens of Atlanta, including those engaged in picketing, was being expended in violation of the terms of the solemn contract and in such manner as to undermine the wage structure in the Atlanta, Georgia, area.

(2) The Court accepted jurisdiction and issued an injunction in a cause concerning which it did not have jurisdiction of the subject matter of said cause, because of the fact that the subject matter of the said cause had been preempted by the United States Government by enactment of the National Labor Rela-

tions Act, Title 29, Section 140, et seq., of the United States Code Annotated.

(3) That the Court, by issuing said temporary injunction restraining said picketing, violated rights of the Petitioner preempted by the United States Government by enactment of the National Labor Relations Act, Title 29, Section 141 et seq., United States Code Annotated, and more particularly Section 157 thereof, in that it denied Petitioner in Certiorari the privilege of peacefully engaging in concerted activity to publicize a breach of contract destructive to its members' wages, hours and working conditions.

WAY CONSTITUTIONAL AND FEDERAL QUESTIONS WERE RAISED BELOW

Plea in abatement was filed in the trial court raising said questions. However, under Georgia procedure a Plea in Abatement is not ruled upon as such at a temporary injunction hearing, and therefore was not a part of the record on appeal. However, the court may and does consider all questions raised in the pleading in ruling whether temporary injunction should issue. All of said constitutional and federal issues were raised and argued both in the trial court and in the Supreme Court of Georgia.

(See part of brief to ~~Superior~~ Supreme Court of Georgia raising said issue, Appendix, pp. 68-75.)

REASONS REVIEW SHOULD BE GRANTED

Petitioner respectfully submits that this Court should grant this review on certiorari because the case involved is of great public concern and contains matters of gravity and importance not only to your Petitioner but also to others similarly situated throughout the entire United States. The gravity and importance of the matters in the public concern will be manifest to this Court upon a consideration of this Petition for Certiorari. Petitioner suggests and urges the following reasons, among others, for which the Petition for Certiorari comes within the purview of this Court and should be granted.

(1) In the State of Georgia the hearing upon the application for temporary injunction is in actuality the final hearing in a labor dispute. In Fulton County, Georgia, a case will not come on for trial upon the final merits of the controversy within less than one (1) year from the date of the filing of the original petition, (Exhibit 2 to this Petition) by which time the controversy is invariably entirely moot, the strike being terminated, the construction project in almost all cases being completed. The only hearing having any possible bearing upon the controversy before said controversy becomes moot is a hearing upon application for temporary injunction. Review of the records of the Superior Court of Fulton County, Georgia, which County encompasses most of the City of Atlanta and is the largest County in the State of Georgia, reveals the fact that beginning in the year 1952 and con-

tinuing to date hearing upon application for interlocutory injunction were heard in 46 cases, and not a single one of said cases proceeded to final hearing. The style of said cases and the relief granted is as follows: (Affidavit of Thomas L. Carter, Jr., Exhibit 3 to this Petition.)

TEMPORARY INJUNCTION GRANTED RESTRAINING ALL PICKETING AND/OR ENTIRE STRIKE

(Said cases were filed during the two year periods of time set forth under the word "DATE".)

Style	Case No.	Book No.	Page No.	Date
The Jordan Co., vs. Local Union No. 225 United Brotherhood of Carpenters and Joiners of America.	A-90561	S-8	526	1960-61
Morgan Plumbing & Heating Co., vs. Local 72, Plumbers Union.	A-77975	K-8	588	1960-61
The Dickey Construction Co., vs. Local 72, Plumbers Union.	A-79492	L-8	546	1960-61
H. W. Ivey Construction Co., Inc., vs. Local 72, Plumbers Union.	A-90468	S-8	434	1960-61
R. L. Eskew Contracting Co. vs. Local 613, Electrical Workers Union.	A-73411	H-8	706	1958-59
R. L. Eskew Contracting Co., vs. Local 72, Plumbers Union.	A-73635	I-8	18	1958-59
Perry Printing Process Co., vs. Local 72, Plumbers Union.	A-74953	I-8	678	1958-59

Style	Case No.	Book No.	Page No.	Date
Maple Drive Investment Corp., v. Local 85, Sheet Metal Workers Union.	A-68334	E-8	567	1958-59
Huckabee Transport Corp., vs. Local 728, Teamsters Union.	A-73591	H-8	796	1958-59
F. N. Thompson, Inc., vs. District Council No. 38 and Local No. 193, Printers Union.	A-68018	E-8	409	1958-59
H. W. Ivey Construction Co., Inc., vs. Local 438, Laborers Union.	A-68595	E-8	698	1958-59
The Bonny Corporation vs. Local 438, Laborers Union.	A-76808	K-8	4	1958-59
H. W. Ivey Construction Co., vs. Local 438, Laborers Union.	A-76809	K-8	13	1958-59
Johnson Freight Lines, Inc., vs. Local 728, Teamsters.	A-68453	E-8	698	1958-59
Dixie Ohio Express, Inc., vs. Local 728, Teamsters	A-68454	E-8	698	1958-59
Ryder Truck Lines, Inc., vs. Local 728, Teamsters Union.	A-77184	K-8	192	1958-59
Maple Drive Investment Corp., vs. Local 926, Operating Engineers.	A-68505	E-8	653	1958-59
Maple Drive Investment Corp., vs. Local 438, Laborers Union.	A-68596	E-8	698	1958-59
Georgia Utility Construction Co., vs. Local 72, Plumbers; Local 438, Laborers Union; and Local 926, Operating Engineers Union.	A-63539	B-8	570	1956-57

Style	Case No.	Book No.	Page No.	Date
Campbell Coal Co., vs. Local 859, Teamsters Union; Local 926, Operating Engineers; Local 438, Laborers Union.	A-54285	V-7	743	1956-57
Loo Mac Freight Lines, Inc., vs. Local 728, Teamsters Union.	A-56267	X-7	134	1956-57
The Thomas Pipe Line Co., Inc., vs. Local 225, Carpenters Union.	A-57717	Y-7	58	1956-57
H. W. Ivey Construction Co., vs. Bricklayers and Masons Union No. 8 of Georgia.	A-51320	V-7	60	1954-55
Atlanta Steel Erectors, Inc., vs. Local 859, Teamsters Union.	A-47283	R-7	442	1954-55
George's Pick-Up and Delivery Service vs. Local 728, Teamsters Union.	A-49028	S-7	51	1954-55
Lance Roofing Co., Inc., vs. Local 136, United Slate Tile & Composition Roofers Union.	A-49087	S-7	44	1954-55
F. A. Nart Mfg. Co., vs. Local 122, Ladies Garment Workers Union.	A-44558	P-7	679	1954-55
Lockheed Air Craft Corp., vs. Local 438, Laborers Union.	A-33165	I-7	583	1952-53
Southern Bell Telephone & Telegraph Co., vs. Local 10-322, Communications Workers Union, et al.	A-29643	G-7	422	1952-53

INJUNCTION GRANTED RESTRAINING OR LIMITING PICKETING CONDUCT

Style	Case No.	Book No.	Page No.	Date
Southern Airways, Inc., vs. Airline Pilots Association International.	A-81199	M-8	600	1960-61
McGregor & Werner, Inc., vs. Atlanta Bookbinders and Bindery Women's Union Local No. 96, International Brotherhood of Bookbinders, AFL - CIO.	A-88153	R-8	77	1960-61
Aero Corporation vs. Atlanta District Lodge 46, Machinsts AFL - CIO.	A-85468	P-8	334	1960-61
John W. Burdette vs. Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL - CIO, Local No. 732.	A-88083	R-8	42	1960-61
Golian Steel and Iron Co., vs. Shopmen's Local 616, Iron Workers, AFL - CIO.	A-75089	I-8	745	1958-59
Atlantic Steel Co., vs. Local 2401, Steel Workers Union.	A-70517	G-8	59	1958-59
Pleasure Togs, Inc., vs. Local 122, Ladies Garment Workers Union.	A-60484	Z-7	64	1956-57
Swift & Co., vs. Local 355, United Packing House Workers Union.	A-61040	A-8	120	1956-57
American Box and Paper Co., vs. Local 8, Printing Pressmen and Assistants Union.	A-49039	S-7	520	1954-55

Style	Case No.	Book No.	Page No.	Date
Parks Garment Co., vs. Local 122, Ladies Garment Workers Union.	A-47129	R-7	365	1954-55
Dixie Wholesale Co., Inc., vs. Local 728, Teamsters Union.	A-50342	T-7	371	1954-55
Metal Arts Mfg. Co., vs. District Lodge No. 46, Fulton Lodge No. 2, Machinists Union.	A-37855	L-7	528	1952-53

TEMPORARY INJUNCTION DENIED

Style	Case No.	Book No.	Page No.	Date
Bill's Delivery Service, Inc.; vs. Local 728, Teamsters Union.	A-57531	X-7	766	1956-57
Southern Railway Co., vs. Local Lodge No. 354, Brotherhood of Railway Carmen.	A-57495	X-7	748	1956-57
Pilot Freight Carriers, Inc., vs. Local 312, Teamsters Union.	A-44949	Q-7	75	1954-55
Pilot Freight Carriers, Inc., vs. Local 182, Teamsters Union.	A-44903	Q-7	52	1954-55
Pittsburgh Plate Glass Co. vs. Local Union 193 and District Council No. 38, Painters Union; Atlanta Bldg., and Construction Trades Council.	A-40342	N-7	171	1952-53

It will be observed from the above record that in a full decade only five cases have resulted in a denial of application for injunction, and in not a single case within the last ten years has the matter proceeded beyond the temporary injunction stage.

In *none* of said cases did the case ever come on for final hearing, but the temporary injunction hearing was completely determinative of the cause.

(2) If this Court fails to grant certiorari in this cause upon hearing of interlocutory injunction, the controversy in such matters always being moot by the time they can be heard upon application for final injunction, not only the Petitioner but all of labor will be enjoined and prevented from exercising its freedom of speech to publicize a labor controversy and to publicly criticise its own elected Officials and to advertise the manner in which public Officials are spending the tax dollars of the citizens of the municipality, and the hard won rights of freedom of speech as protected by the Fourteenth Amendment to the Constitution of the United States will be a nullity.

(3) The decision and judgment of the Supreme Court of the State of Georgia constitute a violation of the rights not only of Petitioner but of all citizens to, by the carrying of placards, exercise their freedom of speech in publicizing admittedly truthful facts relating to the conduct and activities of their duly elected Representatives.

(4) Rights protected by the Government of the United States by enactment of the National Labor Relations Act, Title 29, Section 141, et seq., of the United States Code Annotated, will be violated, and due to the fact that the controversies are always moot

before they come on for hearing upon final application for injunction there will be no redress.

(5) A temporary injunction will remain in full force and effect in labor relations matters preempted by the United States Government by enactment of the National Labor Relations Act, Title 29, Section 141, et seq., of the United States Code Annotated.

(6) The uniformity of the law sought by the United States Government by enactment of the National Labor Relations Act will be destroyed, and said Act will have no meaning within the State of Georgia.

ARGUMENT

THE TEMPORARY INJUNCTION HEARING IS ACTUALLY THE FINAL HEARING

It is respectfully submitted that the purposes of the rule of the Supreme Court of the United States that it will not grant certiorari from a decision at an interlocutory stage of the proceedings below but will grant certiorari from a final judgment only do not have applicability in the situation found in the case at bar. For all practical purposes the interlocutory injunction hearing in the State of Georgia and most particularly in Fulton County, Georgia, the most populace County in the State of Georgia, is the final hearing ever held in a labor relations matter. A total of 46 cases have been held involving applications for

temporary injunctions in the labor relations field within the last ten years. In this period of time *not a single case* has gone to hearing upon final application for injunction for the very apparent and important reason that it takes approximately a year, or more, for a case to reach the calendar on application for final injunction, and the matters are always moot by the time they are heard on application for final injunction. The hearing which determines the rights of the parties and which determines whether the picketing shall continue at such time as it is not moot is invariably the temporary injunction hearing. There is no final hearing in these matters. The temporary injunction hearing is for all practical purposes the final hearing and the only hearing that can have any possible consequences relevant to any of the matters involved in those litigations. For the Court to refuse to hear any case because it is an appeal from a temporary injunction which injunction will remain in full force and effect until long after the construction project is completed and the dispute is at an end is to deny to the parties therein absolutely all redress.

The decision of the Supreme Court of the State of Georgia in the case at bar involves a most serious violation of the Bill of Rights as protected against State action by the Fourteenth Amendment to the Constitution of the United States. It constitutes an invasion of the hard won Anglo-Saxon principle of freedom of speech, including the right to criticise any public Official in any truthful, peaceful manner. It also con-

stituted an invasion by the Courts of the State of Georgia of a field of law preempted by the United States Government by enactment of the National Labor Relations Act, Title 29, Section 141, et seq. There will be no redress at any time in cases of this kind unless certiorari is granted as prayed.

The case at bar is not an isolated incident of the Supreme Court of the State of Georgia misinterpreting the decisions of the Supreme Court of the United States. A body of precedent is being established in the State of Georgia, which it is respectfully submitted is inconsistent with the decisions of the Supreme Court of the United States and no redress has been obtainable because of the fact that said cases were always determined at the temporary injunction stage and the cases never reached final hearing.

In the case of *Ellis vs. Parks*, 212 Ga., 540, 93 S.E. 2d, 708, decided July 10, 1956, the Supreme Court of Georgia found that temporary injunction should issue because the union had been found by the United States District Court to be liable in damages under Section 303 of the National Labor Relations Act, Title 29, Section 187 U.S.C.A., for striking for recognition in the face of the certification of another union by the National Labor Relations Board. Said United States District Court case was styled as *Parks vs. Atlanta Printing Pressmen & Assistants' Union*, 150 Fed. Supp., 246, and said case was appealed to the United States Fifth Circuit Court of Appeals, which rendered opinion reported in 243 Fed. 2d, 284. The State

Court granted said temporary injunction because of a holding in said damage suit in Federal Court that the National Labor Relations Act had been violated, the State Supreme Court stating with reference to Federal preemption the following:

> "This State has the power to enforce its Constitution and laws in such a case, and the offenders can find no refuge behind the Taft-Hartley Act, 29 U.S.C.A., Section 141, et seq. That law was not intended to protect unlawful conduct."

The case at bar represents a mere extension of the decision of the Supreme Court of the State of Georgia in the case of *Fleming vs. H. W. Ivey Construction Co.*, reported in 215 Ga., 460, 111 S.E. 2d, 97. Ivey Construction Company was the general contractor engaged in construction of a building at the University of Georgia. The Court found in said case that the union had verbal contracts with a sub-contractor on said project, Wren Construction Company, providing that in all construction in the State of Georgia Wren Construction Company would pay an hourly wage of $3.85. On said construction at the University of Georgia, Wren Construction Company only paid the sheet metal workers $3.35 rather than the $3.85 per hour as agreed. The sheet metal workers erected a picket sign stating that Wren Construction Company was paying less than the union scale. The Court found that it did not definitely appear from the record whether or not the union represented a majority of the employees. The Superior Court granted a tem-

porary injunction and on appeal the Supreme Court of the State of Georgia held that the grant of said injunction was proper. Examination of the said case will reveal that the Supreme Court of Georgia in so deciding held as follows:

1. Since there was no hiring hall required by the contract, the contract was without consideration and unenforceable.

2. That interstate commerce was not involved. The Court so held notwithstanding the fact that the Ivey Construction Company admitted that some of the materials going into said construction were shipped from points beyond the State of Georgia and said case was determined prior to elimination of the "no man's land" in the 1959 Amendments.

3. Since it did not affirmatively appear in the record that the union represented a majority of the employees, although there was no evidence that they did not represent a majority of the employees, the union had no right to publicize the fact that said company was only paying $3.35 an hour, wereas the prevailing union rate was $3.85 per hour.

4. Although the Court held that the picketing was entirely peaceful, it stated: "As stated heretofore by this Court in Ellis vs. Parks, 212 Ga., 540, 93 S.E. 2d, 708, the State has the power to enforce its Constitution and Laws and the mere fact that the Federal Government has enacted legislation to diminish the cause of labor

> disputes threatening or obstructing interstate and foreign commerce in nowise excludes the exercise of the police power of the State."

In said case the Court stated:

> "Where there is any evidence to support the ruling of the lower court the discretion of the trial judge will not be controlled in the grant or denial of a temporary injunction. Thus, this court cannot hold that there was an abuse of discretion here. See Log Cabin Steak Co., vs. Burton, 212 Ga., 648, 94 S.E. 2d, 694, and cases cited therein; Woodard vs. Collier, 210 Ga., 239, 78 S.E. 2d, 526, supra; Ellis vs. Parks, 212 Ga., 540, 93 S.E. 2d, 908, supra."

This principle of law was neither mentioned nor applied in the case at bar in which case the trial court had held that injunction should *not* issue.

It is, therefore, respectfully submitted that the Supreme Court of the State of Georgia has consistently misinterpreted the decisions of the Supreme Court of the United States both on the subject of Federal preemption and on the question of freedom of speech under the Fourteenth Amendment to the Constitution of the United States. Due to the fact that said decisions arise at the temporary injunction state and *without exception* never proceed beyond that stage all of labor throughout the State of Georgia is completely without redress.

Of course, for every case carried to the State Supreme Court there are great numbers of cases in which the trial courts have granted injunctions based on said precedents set by the Supreme Court of the State of Georgia.

This Court has indicated that the rule of finality is not an absolute one and that the language used by Congress in 1789, in conferring power of review in this Court, will not be applied literally or mechanically. As stated by Mr. Justice Frankfurter in *Radio Station WOW v. Johnson*, 326 U.S., 120, at 124, speaking for the majority of the Court:

> "But even so circumscribed a legal concept as appealable finality has a penumbral area . . . Considerations of English usage as well as those of judicial policy would readily justify an interpretation of 'final judgment' so as to preclude reviewability here where anything further remains to be determined by a state court, no matter how disassociated from the only Federal issue that has finally been adjudicated by the highest court of the State . . .
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> "Unfortunately, however, the course of our jurisdictional history has not run as smoothly as such a mechanical rule would make it. To enforce it now, or to pronounce it for the future, would involve disregard of at least two controlling precedents, both of them expressing the views of numerous courts, and one of which has stood in our books for nearly a hundred years, in an

opinion carrying the authority, especially weighty in such matters, of Chief Justice Taney."

In the earlier case referred to in the above quoted opinion—*Forgay vs. Conrad*, 6 How. 201, Mr. Chief Justice Taney first indicated a policy of liberally interpreting and applying the requirement of finality as follows:

> "The question upon the motion to dismiss is whether this is a final decree, within the meaning of the Acts of Congress. Unfortunately, it is not final, in the strict, technical sense of that term. But this Court has not heretofore understood the words 'final decrees' in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the Legislature."

Republic Natural Gas Company vs. Oklahoma, 334 U.S. 62, followed *Radio Station WOW v. Johnson*. Mr. Justice Frankfurter, again speaking for the majority, indicated an additional area in which the requirement of finality would not be rigidly applied. In discussing a situation in which review would be permitted even though no technical finality was present, Justice Frankfurter indicated that a rigid application would not be required and that the rule would be relaxed where there existed "any immediate threat of irreparable damage . . . rendering postponed review so illusory as to make the decree 'final now or never'."

Mr. Justice Rutledge, dissenting in the *Republic Natural Gas Company* case, *supra*, reviewed the decisions of this Court which abjure a rigid and literal interpretation of the word "final" as appears in Section 1257 of the U. S. Code and concluded as follows:

> "The fact that all phases of the litigation are not concluded does not necessarily defeat our jurisdiction . . . But not every decision by a State court leaving the controversy open to further proceedings and orders is either inconclusive of the issues or premature for purposes of review under Section 237. This appears most recently from the decision in *Radio Station WOW v. Johnson* which applied a settled line of authorities to that effect. Cf. *Richfield Oil Corp. v. State Bd. of Equalization*, 329 U.S. 69, 91 L.Ed. 80, 67 S.Ct. 156.
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> "In such cases the formulation of the test of finality made in the Gospel Army and like decisions has not been followed. Instead that question, in the special circumstances, has been treated as posing essentially a practical problem, not one to be determined either by the label attached to the state court judgment by local law, Richfield Oil Corp., vs. State Bd. of Equalization (US) supra, or by the merely mechanical inquiry whether some further order or proceeding beyond 'the ministerial act of entering the judgment' may be had or necessary after our decision is rendered. Radio Station WOW vs. Johnson, supra (326 US, at 125, 89 L.Ed. 2097, 65 S.Ct. 1475) . . . The section's [1257] policy to furnish full, ade-

quate and prompt review outweighed any design to secure absolute and literal 'finality'."

In considering whether to exercise its jurisdiction to review, this Court has considered substance rather than form and has indicated that the face and form of the judgment is not controlling. *Clark vs. Williard*, 292 U.S. 112, at 118; *Gospel Army vs. Los Angeles*, 331 U.S. 543, at 546.

Mr. Justice Brandeis, speaking for the full Court in *Myers vs. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, has laid down a rule of policy which is directly applicable here. We appreciate, of course, that the decision is not decisive, review by this Court of the Circuit Courts of Appeal of temporary orders and judgments of the federal district courts not having the same statutory basis as review of state court judgments. Nevertheless the considerations which persuaded the Court in that case to relax its policy of denying review of temporary orders of the federal district courts, is equally persuasive here, the status of the litigation in that case paralleling the status of the litigation here and similar legal points being at issue: Justice Brandeis stated as follows:

"The Circuit Court of Appeals should have reversed the decrees for a preliminary injunction. It is true that ordinarily the decree of a District Court granting or denying a preliminary injunction will not be disturbed on appeal. But that rule of practice has no application where, as here, there was an insuperable objection to the

> maintenance of the suit in point of jurisdiction and where it clearly appears that the decree was the result of an improvident exercise of judicial discretion."

This is not like the usual case in which this Court declines review where it is sought to review a decision in respect to the merits or as to some point made in the course of an otherwise unobjectionable interim proceeding. On the contrary, it is the very action of the state court in undertaking to grant temporary injunctive relief which creates the central issue which gives rise to the federal question. Under such circumstances, it is respectfully submitted that this Court can and should exercise its appellate powers. See *Radio Station WOW vs. Johnson*, supra; *Rescue Army v. Municipal Court*, 331 U.S. 549, at 565-568; *Cohen vs. Beneficial Loan Corp.*, 337 U.S. 541, at 546.

In the case of *Montgomery Building & Construction Trades Council vs. Ledbetter Erection Company*, 344 U.S. 178, 73 Supreme Ct., 196, Mr. Justice Douglas, with Mr. Justice Black concurring, stated in his dissenting opinion:

> "The question presented is the *power* of the state court to issue a temporary injunction in this kind of labor dispute. If petitioners had sought mandamus or another appropriate state writ directed against the judge who issued the temporary injunction, I should have no doubt that it would be a final judgment which we would review. See Bandini Petroleum Co., vs. Superior

Court, 284 U.S. 8, 14, 52 S.Ct. 103, 105, 76 L.Ed. 136. Cf. Rescue Army v. Municipal Court, 331 U.S. 549, 565, 67 S.Ct. 1409, 1417, 91 L.Ed. 1666. I see no difference of substance between that case and this. The mischief of temporary injunctions in labor controversies is well known. It is done when the interlocutory order is issued. The damage is often irreparable. The assertion by the state court of *power* to act in an interlocutory way is final. Whether it has that *power* may be determined without reference to any future proceedings which may be taken. Unless the rule of finality is to be purely mechanical, which to date it has not been, see Radio Station WOW v. Johnson, 326 U.S. 120, 124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092, we should determine now whether the National Labor Relations Act permits a state court to interfere with a labor controversy in a way, which though interim in form, irretrievably alters the status of the dispute or in fact settles it."

It is respectfully submitted that the Montgomery Building & Construction Trades Council case differed from the case at bar in that no showing was made in that case that in no case could a decision be reached on a hearing upon application for permanent injunction. In the case at bar the records of the Superior Court of Fulton County, Georgia, have been completely researched for a full decade, and in said period of ten years, although 46 cases involving injunctions have been processed, *not one single case* has ever proceeded to hearing beyond the so-called temporary injunction stage. It is, therefore, apparent that what

the Court is asked to review in this case is actually a final judgment.

THE FACTS OF THE CONTROVERSY

It is herewith respectfully submitted that the important and pertinent facts in this cause are without disptue. It is not disputed that the contract between the Defendant in Certiorari and the City of Atlanta contained a provision as follows: "Wages will conform with those being paid on similar types of work in the Atlanta area". It is not disputed and is found by both the Trial Court and the Supreme Court of the State of Georgia that this contract was being violated and that the employees were not being paid the wages being paid for similar type of work in the Atlanta area. It is not disputed and is found both by the Trial Court and the Supreme Court of the State of Georgia that the picketing was at all times peaceful. There is no allegation of any secondary boycott activity or any other violation of law.

The Supreme Court of Georgia states that picketing was a violation of the State's Right To Work Law. However, thehre is no evidence in this case to sustain such a conclusion. It is found that an officer of another organization in the month of January made a statement to Defendant in Certiorari that the Defendant in certiorari must employ union labor. However, there is no evidence at all in the record that the Petitioner in Certiorari at any time made any demand

relating to who must be employed. Irrespective of this fact the evidence is undisputed that no action was taken by any union following the conference in January, 1961, and there was no attempt to compel the employer to in any way violate the State Right To Work Law. The Petitioner in Certiorari did concern itself with having the wage rate increased to conform with the normal wage rate in the area and to conform to the rate Defendant in Certiorari had agreed to pay in its contract with the City of Atlanta. The Petitioner in Certiorari exhausted every possible means to have this wage rate raised before publicizing the fact that depressed wages were being paid in violation of said contract. It is completely undisputed that numerous conferences were held with the City Attorney of the City of Atlanta in an effort to have the wage rate as set forth in the contract complied with and the matter was finally carried to the City Board of Aldermen and the Board of Aldermen in their Order as hereinabove quoted made plain that the only request made by the Petitioner in Certiorari was that the wages be increased. It is undisputed that it was made plain to the City Attorney in all of said conferences that the union was making no contention that any person should be discharged or any person hired, but was only seeking to protect the wage structure in the area. Not one word of evidence apepars in the record to the effect that there was any attempt made throughout the time of these conferences with the City Attorney and this hearing before the City Board of Aldermen stretching over a period of many months immediately prior to the picketing to compel the em-

ployment of union labor, nor was anyone even requested to do so. In view of these facts the Trial Court found that the picketing was for the purpose of publicizing said breach of contract relating to the wage structure and was a protected exercise of freedom of speech and could not be enjoined. On the original application for temporary restraining order another Judge refused temporary restraining order on the same ground. There is no basis in the evidence on the undisputed facts of any finding that the picketing in this cause was for an illegal purpose. The Petitioner in Certiorari showed an unusual amount of patience in exhausting every other method of getting the wage scale increased, and only after six or seven months of persistent futile efforts and only after the City Board of Aldermen had ruled that they would do nothing about the matter did the Petitioner in Certiorari resort to its only remaining redress, which was to call to the attention of the public, including Defendant in Certiorari's employees, the detriment that was being done to the wage structure of labor in the Atlanta area.

The Petitioner is not a group of outsiders or interlopers involving itself in something that does not concern it. The undisputed evidence establishes that most construction projects are given on competitive bids, and that a company paying depressed wages can underbid the companies who are paying the union scale. The result is that those companies paying the union scale will eventually go bankrupt for want of securing successful bids or to prevent such a result

must in turn reduce their wages to that of the depressed wage structure of the company not paying the standard wage. The ultimate result of this cycle is the comp'ete destruction of all of the hard won wage rates won by labor over many years. It was to prevent this result that the Petitioner concerned itself with this breach of contract. It is further submitted that the Petitioner was not a disinterested outsider because this was not a contract between two private employers, but it was a contract which had been entered into by the City of Atlanta, of which the Petitioner is a part. As citizens of the City of Atlanta the Petitioner had a right to concern itself with the actions of the City of Atlanta, particularly when they had a direct bearing upon wages, hours and working conditions, the betterment of which is the primary function and purpose of existence of the Petitioner. The funds being expended for construction of this project were being paid out of the City Treasury, which receives its funds entirely from the taxes exacted from the citizens of Atlanta including the members of the Petitioner Union. Therefore, the Petitioner had a very direct and real concern in this breach of contract.

PICKETING WAS THE ONLY PRACTICAL WAY OF PUBLICIZING THE FACTS

There was no other method of publicizing this breach of contract which could approach in effectively conveying the message the method which was adopted.

The peop'e most directly concerned in this breach of contract other than labor generally were those who were employed by the Defendant in Certiorari on the construction project and were being paid wages less than they had a contract right to obtain. These persons by working for less wages than the contract with the City of Atlanta called for were making it possible for the Defendant in Certiorari to violate the contract and to depress the wage structure and to destroy the rights of labor generally. These were the persons to whom it was most important for the message to be conveyed and it was most important that they be informed of the fact that they were not receiving the wages they were entitled to under the contract and that by so doing they were undercutting and destroying the right of labor and the wage structure of labor in the greater Atlanta area. The only really effective way of bringing this message to the attention of all of the persons who were most directly involved was by placing this message upon a placard in front of the place where these employees worked. That was the only possible way of conveying the message in such way that all of the people working on the project would know that the City of Atlanta had contracted with the Defendant for the payment of a greater wage than they were receiving and that by working for less said employees were injuring the living standards of labor generally. Therefore, the carrying of the message upon a placard in front of the place of business was not only one way of conveying the message, but was the most effective and quite possibly the only effective way of conveying the message.

PETITIONER IN CERTIORARI HAD A CONSTITUTIONAL RIGHT TO PUBLICIZE THE FACTS ALTHOUGH IT DID NOT REPRESENT THE EMPLOYEES OF THE DEFENDANT IN CERTIORARI.

The Supreme Court of the United States has consistently held that the mere fact that the picketing is being done by persons other than those employed by the company picketed is not adequate or sufficient grounds to deprive those persons of the right to picket, and to seek to so deprive the said persons of said picketing is to infringe upon their freedom of speech as protected by the Fourteenth Amendment to the Constitution of the United States.

In the case of *American Federation of Labor vs. Swing*, 312 U.S. 321, the Court said:

> "A union of those engaged in what the record describes as beauty work unsuccessfully tried to unionize Swing's beauty parlor. Picketing of the shop followed. To enjoin this interference with his business and with the freedom of his workers not to join a union, Swing and his employees began the present suit. In addition, they charged the use of false placards in picketing and forcible behavior towards Swing's customers. . . .
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> ". . .

"Such a ban of free communication is inconsistent with the guarantee of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in the industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become commonplace. American Foundries v. Tri-City Council, 257 U.S. 184, 209. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' Senn v. Title Lawyers Union, 301 U.S. 468, 478."

In the case of *Thornhill vs. Alabama*, 310 U.S. 88, the Supreme Court of the United States held:

> "The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment (Note No. 19). The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times. (Note No. 20). The Continental Congress in its letter sent to the Inhabitants of Quebec (October 26, 1774) referred to the 'five great rights' and said: 'The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs.' Journal of the Continental Congress, 1904 ed., vol. I, pp. 104, 108. Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which informtaion is needed or appropriate to enable the members of society to cope with the exigencies of their period.

"In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. Hague v. C. I. O., 307 U.S. 496 [4 LRR Man. 501]; Schneider v. State, 308 U.S. 147, 155, 162-63 [5 LRR Man. 659]. See Senn v. Title Lawyers Union, 301 U.S. 468, 478. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appear to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem. We concur in the observation of Mr. Justice Brandeis, speaking for the Court in Senn's case (201 U.S. 2d 478): 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom

of speech is guaranteed by the Federal Constitution.'

"It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist (Note No. 21). This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants. See Mr. Justice Brandeis in 254 U.S. at 488. It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society."

In the case of *Cefeteria Employees Union vs. Angelos*, the Court held, in Volume 13 LRRM, 634, 320 U.S. 293:

"But here we have no attempt by the state through its courts to restrict conduct justifiably found to be an abusive exercise of the right to picket. We have before us a prohibition as unrestricted as that which we found to transgress state power in A. F. of L. vs. Swing, supra. The Court here, as in the Swing case, was probably led into error by assuming that if a controversy does not come within the scope of state legislation limiting the issue of injunctions, efforts to make

known one side of an industrial controversy by peaceful means may be enjoined. But, as we have heretofore decided, a state cannot exclude working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' A. F. of L. v. Swing, 312 U.S. at 326 [7 LRR Man. 308]."

In the case of *Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, et al, VS. Wohl et al.*, 315 U.S. 769, the Court held:

"So far as we can ascertain from the opinions delivered by the state courts in this case, those courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course that does not follow: one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive."

It is, therefore completely settled that conduct such as is engaged in in the case at bar is protected by the Fourteenth Amendment of the Constitution of the United States.

The Petitioner had a direct and vital concern in the enforcement of the contract of the City of Atlanta. This contract was the contract executed and enforced by their duly elected Representatives. This contract was paid for by their own tax money. They were engaged in peaceful action in advertising a breach of contract in the only really effective way to convey the message to those most directly concerned. It is undisputed and acknowledged by the Supreme Court of Georgia as well as by the Defendant in Certiorari that the language upon the picket sign was true and accurate and there had actually been a violation of contract between the City of Atlanta and the Defendant. This provision of the contract was incorporated in the contract for the protection of labor generally, and its breach was of vital concern to labor generally. All of the picketing was being engaged in in a peaceful manner. All that was being done was to put a truthful statement as to what the City of Atlanta was doing on a placard.

This injunction goes to the very heart of our Constitutional system. The right to make known what is being done by the duly elected Representatives of the citizens of a community is one of the most sacred rights that is protected by the United States Constitution. The Petitioner is now by injunction with resulting threat of contempt of court prevented from exercising its Constitutional privilege of placing upon a placard a truthful statement as to what its City Officials are doing with their tax money and letting the public know what the City Officials are doing. When

the day comes in the State of Georgia or anywhere in the United States of America when Officials cannot have their actions exposed by those being hurt by the actions of these Officials, and when the day comes that the public cannot be informed upon a placard or otherwise of admittedly true actions by the Officials of the City of Atlanta, the Bill of Rights and the Fourteenth Amendment to the Constitution of the United States are a dead letter and freedom of speech is a cherished heritage only of the past.

For this Court to refuse to grant this Petition for Certiorari because it is an appeal from the sustaining of a temporary injunction would be from all practical purposes to deprive the citizens of the State of Georgia of their freedom of speech without remedy and without redress. As hereinabove set forth, in injunction hearings over the last ten years, not a one has gone to final hearing because of the length of time involved and because of the mootness of the matter by the time it would reach final hearing. Therefore, to say that labor has a right to appeal such a case only after it reaches final hearing is to say that labor has a theoretical right but labor has no actual right of protection accorded it by the Supreme Court or the Constitution of the United States. A theoretical right which cannot be practically exercised leaves the Petitioner and all others being deprived of Constitutional rights and privileges absolutely defenseless, as a right which in practicality and actuality does not exist is no actual right at all. Constitutional rights are not to be lost simply because there is a theoretical right of later re-

dress which actually and practically does not exist. The question is not whether appeal will lie now or later, but whether appeal lies now or never. In the normal situation the granting of an appeal at an interlocutory statge might cause the Court to have Petitions of Certiorari presented to it at two rather than one stage of the law suit, and, therefore, would doubly burden the Court. However, this reason for denying an appeal from a temporary injunction hearing vanishes in view of the fact that in labor relations cases the final disposition in the State Court is the temporary injunction hearing and there is no further hearing as a practical matter from which an appeal might subsequently be prayed. It is, therefore, respectfully submitted that the issues in this cause are much more vital that only the issue that confronts the Petitioner vital though that may be. This is an issue as vital as the fundamental principle of freedom of speech, and if certiorari is denied not only will the Petitioner be denied its freedom of speech but the protection of the Fourteenth Amendment will in large measure be denied to citizens throughout the entire United States.

THE ORDER AND JUDGMENT OF THE SUPREME COURT OF THE STATE OF GEORGIA VIOLATES RIGHTS OF THE PETITIONER IN CERTIORARI PROTECTED BY THE NATIONAL LABOR RELATIONS ACT

Not only does the Order and Judgment of the Supreme Court of the State of Georgia violate funda-

mental right of freedom of speech protected by the Fourteenth Amendment to the Constitution of the United States, but said Order and Judgment also are in violation of right of the Petitioner in Certiorari as protected by Section 7 of the National Labor Relations Act, Title 29, Section 157, United States Code Annotated, which reads as follows:

> "Employees shall have the right to self organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 157 (a) (3 of this Title."

The picketing engaged in in this cause represented concerted activity of various members of the Petitioner in Certiorari for mutual aid or protection within the meaning of the above quoted Statute. A group of persons whose wage structure would be utterly destroyed within the area if the action of S. J. Curry & Company and the City of Atlanta persisted were concertedly taking action to bring to the attention of the employees working for Curry and the public generally the fact that their wage structure was being utterly and completely destroyed and that it was be-

ing done by means of violation of the contract entered into between Curry and the City of Atlanta.

The Supreme Court of the United States has on numerous occasions held that a State Court cannot prohibit any action which is protected by the National Labor Relations Act. In the case of *Weber vs. Anheuser-Busch, Inc.*, 35 LRRM 2637, 348 U.S. 468, the Supreme Court of the United States said:

> "The Court has ruled that a State may not prohibit the exercise of rights which the Federal Act protects. Thus in Hill vs. Florida, 325 U.S. 538, 16 LRRM 734, the State enjoined a labor union from functioning until it had complied with certain Statutory requirements. The injunction was invalidated on the ground that the Wagner Act included a 'Federally established right to collective bargaining' with which the injunction conflicted. International Union vs. O'Brien, 339 U.S. 454, 26 LRRM 2082, involved the strike vote provisions of a State Act which prohibited the calling of a strike until a specific Statutory procedure had been followed. The State Act was held to conflict not only with the procedure and other requirements of the Taft-Hartley strike provisions, but also with the protection afforded by Section 7 of that Act. In Amalgamated Association vs. Wisconsin Employment Relations Board, 340 U.S. 383, 27 LRRM 2385, the State Court issued an injunction under a Statute which made it a misdemeanor to interrupt by strike any essential public utility service. It was held that the State Statute was invalid in that it denied a right which Congress had guaranteed under Sec-

tion 7 of the Taft-Hartley Act, the right to strike peacefully to enforce union demands for wages, hours and working conditions. Last term the Court noted in Garner v. Teamsters Union, 346 U.S. 485, 499, that: 'The detailed prescription of a procedure for restraining of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the National Labor Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a State to impinge on the area of labor combat designed to be free is quite as much an obstruction of Federal policy as if the State were to declare picketing free for purposes or by methods which the Federal Act prohibits.' "

Also see *General Drivers, Warehousemen & Helpers Local Union 89, et al., vs. American Tobacco Company, Inc.*, 348 U.S. 978, 35 LRRM 2709.

In the case of *Building Trades Council vs. Garmon*, 359 U.S. 236, 43 LRRM 2838, the injunction was granted by the State Court in a case in which the union admittedly did not represent the employees working on the job. The Court said:

"When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Section 7 of the Taft-Hartley Act or constitute an unfair labor practice un-

> der Section 8, due regard for the Federal enactment requires that State jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of Federal regulation involves too great a danger of confiict between power asserted by Congress and requirements imposed by State law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed toward the governments of Industrial Relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential flustration of national purposes."

It has been held in a number of cases that regardless of whether conduct is conduct protected or prohibited by the National Labor Relations Act, a State Court has no jurisdiction in the matter. Therefore, even had the conduct of the union been an attempt to coerce the employees, it would have been a Federal and not a State matter. However, it is clear that the action taken was a mere publicizing of a truthful fact.

It is respectfully submitted tha. the State Court had no jurisdiction of this matter for any purpose. The State Court would have no more jurisdiction at the close of this cause than the Court had when it was initially filed. If the Court has no jurisdiction, the entire proceeding is a nullity, and the Supreme Court of the United States can determine this at any time. A failure to grant certiorari at this stage of the proceeding would require the Petitioner in Cer-

tiorari to be bound by a decision not only depriving it of freedom of speech under the Fourteenth Amendment, but also obey an Order issued by a Court having no jurisdiction. Unless the Petitioner in Certiorari should take the risk of subjecting itself to contempt of court it will be governed throughout this entire controversy by an Order entered by a Court having no jurisdiction. Certainly, in view of the fact that experience has shown that the hearing upon Application for temporary injunction is the final hearing in actuality even if not in theory, this Court would have the right to grant certiorari at this stage. A refusal to grant certiorari would mean that freedom of speech to publicize true facts relating to depressing of wages by Defendant in Certiorari and to publicize the actions of its own elected representatives would be lost because of a completely void Order entered by a Court having no jurisdiction of this cause. The theory that any final judgment may be entered in these matters before the controversy becomes moot is a legal fiction and it is submitted that as sacred and fundamental a principle and right as that of freedom of speech should not be lost without any remedy because of a legal fiction.

CONCLUSION

It is, therefore, respectfully submitted that in actuality the decision from which certiorari is prayed is a final judgment rendered by a Court not having jurisdiction of the subject matter of the cause and depriving the Petitioner in Certiorari of fundamental rights

of freedom of speech as protected by the Fourteenth Amendment to the Constitution of the United States. It is further apparent that if certiorari is denied not only the Petitioner but all others seeking to publicize either a labor dispute or by means of a placard the derelictions of its public Officials will be prevented from doing so by court injunction. The Petition for Certiorari should, therefore, be granted as prayed.

Respectfully submitted,

BY: Edwin M. Pearce
Edwin Pearce

and

BY: John S. Patton
John S. Patton,

Attorneys for Petitioner
in Certiorari.

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APPENDIX

"EXHIBIT 1."

Supreme Court of Georgia. Decided

21463. CURRY et al. v. CONSTRUCTION & GENERAL LABORERS UNION LOCAL NO. 438, AFL - CIO.

While the picketing in the present case was peaceful,

> it was for an unlawful purpose, and should have been restrained and enjoined.

HEAD, Presiding Justice. S. J. Curry and others, doing business as a partnership under the name of S. J. Curry & Company, brought a petition for injunction against Local No. 438 of the Construction and General Laborers Union AFL - CIO. The trial judge refused to grant the interlocutory injunction, and the exception is to this order.

November 15, 1960, the petitioners entered into a contract with the City of Atlanta for the construction of certain improvements to sewage disposal facilities of the city. The contract has a limitation of 540 days from December 5, 1960, with a penalty provision for each day beyond the limit in which the work is not completed. The petitioners operate on what is known as an "open shop" basis, that is, they employ workmen without regard to whether or not they are mem-

bers of a labor organization. The petitioners were awarded only the general contract for the construction work. The city subcontracted directly with other contractors for the electrical and plumbing work connected with the project, and the petitioners have no supervision over the work of these contractors. Shortly after the petitioners started on their construction work they were visited by representatives of various local labor unions in the Atlanta area, and a conference was arranged on February 14, 1961. The representatives of the Labor unions requested that the petitioners use union workmen on the job. S. J. Curry, in his affidavit, stated that when he told the union representatives present that the petitioners would not use union members exclusively, since they operate on an "open shop" basis, he was told by Mr. Moore (a representatives of the Building Trades Council of Atlanta) and "other representatives of the unions" that "they would use every means at their command to see that we did use union workmen on our project." On August 10, 1961, a picket was placed by the defendant at the main entrance of the construction site of the petitioners carrying a placard with the following legend: "S. J. Curry & Company, Inc. violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area. CONSTRUCTION AND GENERAL LABORERS UNION 438 AFL CIO." The picket has patrolled the construction site since that time, and because of the picket, the employees of the electrical and plumbing contractors have refused to continue their work, and carriers and suppliers have re-

fused to deliver material and supplies. This has resulted in a partial cessation of the work, since the construction can not proceed without electrical and plumbing work and the delivery of essential supplies. The consequence of the partial cessation of work has been the discharge of all but 37 of the 72 men working on the job at the time the picket was established.

The contract of the petitioners with the city contains the following language: "Wages will conform with those being paid on similar types of work in the Atlanta area." The evidence introduced for the defendant showed that the petitioners were not paying their employees the wage scale of specified construction contractors in the Atlanta area. James Moore, in his affidavit, stated that he had attempted to persuade the petitioners to comply with their contract with the city in regard to the payment of wages, and had conferred with officials of the city in an effort to have them require the petitioners to comply with their contract, but had been unsuccessful in both attempts.

"Peaceful picketing is not unlawful, unless it is for an illegal purpose. On the contrary, it is authorized under the constitutional guarantee of free speech." Cook v. Huckabee Transport Corp., 215 Ga. 9 (108 SE 2d 710). The picketing in the present case was peaceful. The trial judge was authorized to find from the evidence that the petitioners were not paying wages conforming with those paid on similar types of work in the Atlanta area. It is asserted by the defendant that it has a right to use the method of picket-

ing to inform the public of the petitioners' failure to abide by the terms of their contract with the City of Atlanta, that it is a matter of legitimate concern to the defendant that the wages paid by the petitioners are lower than those paid on similar types of work in the area, since contracts are ordinarily let on competitive bids and a company paying lower wages can underbid contractors paying union wages.

It is asserted in the petition, and shown by undisputed evidence of the petitioners that the establishment of a picket by a labor union (whatever placard the picket may carry) is a signal to all members of the labor unions to refuse to work on the job, or to furnish supplies for it, and this fact was known to the defendants. The petitioners have no labor dispute with their employees, and the defendant is not representing employees of the petitioner. The defendant has chosen to use a method of imparting information to the public which it knew would have the effect of paralyzing the petitioners' operations, preventing them from completing their contract within the time limit provided by its terms, and forcing them to discharge a number of their employees.

The facts of the present case are similar to those in Powers v. Courson, 213 Ga. 20 (96 SE 2d 577), in which it was held: "The decision of this court in Woodard v. Collier, 210 Ga. 239 (78 S.E. 2d 526), is controlling in the instant case. Here, as in that case, the evidence demands a finding that the picket was placed on the job for the purpose of forcing Powers

to employ only union labor, or be unable to comply with the terms of his contract because of the refusal of the members of other unions employed in the work to cross the picket line, and thereby slow the project to a virtual standstill. As held in that case, such picketing is for an unlawful purpose, and clearly a violation of the provisions of Code (Ann. Supp.) §54-804, and Code §66-9906. See also Local Union No. 10, United Association of Journeymen Plumbers & Steamfitters v. Graham, 345 U.S. 192 (73 Sup. Ct. 585, 97 L.Ed. 946); Ellis v. Parks, 212 Ga. 540 (93 S.E. 2d 708)."

The trial judge erred in refusing the interlocutory injunction.

Judgment reversed. All the Justices concur.

"EXHIBIT 1a."

SUPREME COURT OF GEORGIA

Atlanta, January 4, 1962.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

C. J. Curry et al v. Construction & General Laborers Union Local No. 438, AFL - CIO.

This case came before this court upon a writ of error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed because the court erred in refusing the interlocutory injunction. All the Justices concur.

Bill of Costs, $15.00

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE, ATLANTA

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia, and that paid the above bill costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk

"EXHIBIT 2."

IN THE
SUPREME COURT OF THE UNITED STATES

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS' UNION, AFL - CIO,

VS. Case No. .....

S. J. CURRY, C. D. McKNIGHT, JR., E. H. HIGHTOWER and J. E. TAPPAN, DOING BUSINESS AS S. J. CURRY & COMPANY, A PARTNERSHIP.

AFFIDAVIT

GEORGIA, FULTON COUNTY.

I, J. W. SIMMONS, being first duly sworn do hereby make oath that I am Clerk of the Superior Court of Fulton County, Georgia, and that the average time required for a case to come to trial on the final merits in the Superior Court of Fulton County, Georgia, is in excess of one (1) year from the date of the filing of the original petition.

/s/ J. W. Simmons
J. W. Simmons, Clerk, Superior Court of Fulton County, Georgia.

Sworn to and subscribed
before me, this 22nd
day of March, 1962.

/s/ Estelle U. Roberts
Notary Public, Fulton County, Georgia.
My Commission Expires June 13, 1965

(SEAL)

"EXHIBIT 3."

IN THE
SUPREME COURT OF THE UNITED STATES

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS' UNION, AFL - CIO,

VS. CASE NO. .....

S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER AND J. E. TAPPAN, DOING BUSINESS AS S. J. CURRY & COMPANY, A PARTNERSHIP.

AFFIDAVIT

GEORGIA, FULTON COUNTY.

I, THOMAS L. CARTER, JR., Attorney, being first duly sworn, hereby solemnly swear that I have carefully searched the records of the Superior Court Clerk's Office of Fulton County, Georgia, and that said records reveal only the following cases since the year 1952 in which injunctions have been granted or denied against labor unions, and in none of said cases did the case come on for trial on final hearing. Said cases are as follows:

TEMPORARY INJUNCTION GRANTED RESTRAINING ALL PICKETING AND OR ENTIRE STRIKE

(Said cases were filed during the two year periods of time set forth under the word "DATE".)

Style	Case No.	Book No.	Page No.	Date
The Jordan Co., vs. Local Union No. 225 United Brotherhood of Carpenters and Joiners of America.	A-90561	S-8	526	1960-61
Morgan Plumbing & Heating Co., vs. Local 72, Plumbers Union.	A-77975	K-8	588	1960-61
The Dickey Construction Co., vs. Local 72, Plumbers Union.	A-79492	L-8	546	1960-61
H. W. Ivey Construction Co., Inc., vs. Local 72, Plumbers Union.	A-90468	S-8	434	1960-61
R. L. Eskew Contracting Co., vs. Local 613, Electrical Workers Union.	A-73411	H-8	706	1958-59
R. L. Eskew Contracting Co., vs. Local 72, Plumbers Union.	A-73635	I -8	18	1958-59
Perry Printing Process Co., vs. Local 72, Plumbers Union.	A-74953	I-8	678	1958-59
Maple Drive Investment Corp., v. Local 85, Sheet Metal Workers Union.	A-68334	E-8	567	1958-59
Huckabee Transport Corp., vs. Local 728, Teamsters Union.	A-73591	H-8	796	1958-59
F. N. Thompson, Inc., vs. District Council No. 38 and Local No. 193, Printers Union.	A-68018	E-8	409	1958-59

Style	Case No.	Book No.	Page No.	Date
H. W. Ivey Construction Co., Inc., vs. Local 438, Laborers Union.	A-68595	E-8	698	1958-59
The Bonny Corporation vs. Local 438, Laborers Union.	A-76808	K-8	4	1958-59
H. W. Ivey Construction Co., vs. Local 438, Laborers Union.	A-76809	K-8	13	1958-59
Johnson Freight Lines, Inc., vs. Local 728, Teamsters.	A-68453	E-8	698	1958-59
Dixie Ohio Express, Inc., vs. Local 728, Teamsters Union.	A-68454	E-8	698	1958-59
Ryder Truck Lines, Inc., vs. Local 728, Teamsters Union.	A-77184	K-8	192	1958-59
Maple Drive Investment Corp., vs. Local 926, Operating Engineers.	A-68505	E-8	653	1958-59
Maple Drive Investment Corp., vs. Local 438, Laborers Union.	A-68596	E-8	698	1958-59
Georgia Utility Construction Co., vs. Local 72, Plumbers; Local 438, Laborers Union; and Local 926, Operating Engineers Union.	A-63539	B-8	570	1956-57
Campbell Coal Co., vs. Local 859, Teamsters Union; Local 926, Operating Engineers; Local 438, Laborers Union.	A-54285	V-7	743	1956-57
Loo Mac Freight Lines, Inc., vs. Local 728, Teamsters Union.	A-56267	X-7	134	1956-57
The Thomas Pipe Line Co., Inc., vs. Local 225, Carpenters Union.	A-57717	Y-7	58	1956-57

Style	Case No.	Book No.	Page No.	Date
H. W. Ivey Construction Co., vs. Bricklayers and Masons Union No. 8 of Georgia.	A-51320	V-7	60	1954-55
Atlanta Steel Erectors, Inc., vs. Local 859, Teamsters Union.	A-47283	R-7	442	1954-55
George's Pick-Up and Delivery Service vs. Local 728, Teamsters Union.	A-49028	S-7	51	1954-55
Lance Roofing Co., Inc., vs. Local 136, United Slate Tile & Composition Roofers Union.	A-49087	S-7	44	1954-55
F. A. Nart Mfg. Co., vs. Local 122, Ladies Garment Workers Union.	A-44558	P-7	679	1954-55
Lockheed Air Craft Corp., vs. Local 438, Laborers Union.	A-33165	I-7	583	1952-53
Southern Bell Telephone & Telegraph Co., vs. Local 10-322, Communications Workers Union, et al.	A-29643	G-7	422	1952-53

INJUNCTION GRANTED RESTRAINING OR LIMITING PICKETING CONDUCT

Style	Case No.	Book No.	Page No.	Date
Southern Airways, Inc., vs. Airline Pilots Association International.	A-81199	M-8	600	1960-61
McGregor & Werner, Inc., vs. Atlanta Bookbinders and Bindery Women's Union Local No. 96, International Brotherhood of Bookbinders, AFL - CIO.	A-88153	R-8	77	1960-61

Style	Case No.	Book No.	Page No.	Date
Aero Corporation vs. Atlanta District Lodge 46, Machinsts AFL - CIO.	A-85468	P-8	334	1960-61
John W. Burdette vs. Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL - CIO, Local No. 732.	A-88083	R-8	42	1960-61
Golian Steel and Iron Co., vs. Shopmen's Local 616, Iron Workers, AFL -, CIO.	A-75089	I-8	745	1958-59
Atlantic Steel Co., vs. Local 2401, Steel Workers Union.	A-70517	G-8	59	1958-59
Pleasure Togs, Inc., vs. Local 122, Ladies Garment Workers Union.	A-60484	Z-7	64	1956-57
Swift & Co., vs. Local 355, United Packing House Workers Union.	A-61040	A-8	120	1956-57
American Box and Paper Co., vs. Local 8, Printing Pressmen and Assistants Union.	A-49039	S-7	520	1954-55
Parks Garment Co., vs. Local 122, Ladies Garment Workers Union.	A-47129	R-7	365	1954-55
Dixie Wholesale Co., Inc., vs. Local 728, Teamsters Union.	A-50342	T-7	371	1954-55
Metal Arts Mfg. Co., vs. District Lodge No. 46, Fulton Lodge No. 2, Machinists Union.	A-37855	L-7	528	1952-53

TEMPORARY INJUNCTION DENIED

Style	Case No.	Book No.	Page No.	Date
Bill's Delivery Service, Inc., vs. Local 728, Teamsters Union.	A-57531	X-7	766	1956-57
Southern Railway Co., vs. Local Lodge No. 354, Brotherhood of Railway Carmen.	A-57495	X-7	748	1956-57
Pilot Freight Carriers, Inc., vs. Local 312, Teamsters Union.	A-44949	Q-7	75	1954-55
Pilot Freight Carriers, Inc., vs. Local 182, Teamsters Union.	A-44903	Q-7	52	1954-55
Pittsburgh Plate Glass Co. vs. Local Union 193 and District Council No. 38, Painters Union; Atlanta Bldg., and Construction Trades Council.	A-40342	N-7	171	1952-53

/s/ Thomas L. Carter, Jr.
Thomas L. Carter, Jr.

Sworn to and subscribed before me, this 21st day of March, 1962.

/s/ Lillian C. Ray
Notary Public, Georgia State at Large
My Commission Expires Jan. 16, 1963

PART OF BRIEF TO SUPREME COURT OF GEORGIA

The fact that the employees working for the Plaintiff in Error are not shown to be represented by the Defendant in Error certainly does not prohibit the Defendant in Error from publicizing this flagrant breach of contract.

In the case of *American Federation of Labor vs. Swing*, 312 U.S. 321, 61 S.Ct. 568, the Supreme Court of the United States had occasion to pass upon the question of whether a State could enjoin picketing where the Union is not the collective bargaining representative of the majority of the employer's employees. The Supreme Court of the United States stated:

> "All that we have before us then is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' so as to occasion 'imminent and aggravated danger.' Thornhill vs. Alabama, 310 U.S. 88, 105, 60 S.Ct. 736, 746, 84 L.Ed. 1093. We are asked to sustain a decree which for purposes of this case asserts as the common law of a State that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.
>
> Such a ban of free communication is inconsistent with the guarantee of freedom of speech."

In the case of *Mason and Dixon Lines, Inc., vs. Odom et al*, 193 Ga. 471, 18 S.E. 2d 841, the Court, in ruling that an injunction could not issue, quoted with approval from the case of *American Federation of Labor vs. Swing*, supra, as follows:

> "In American Federation of Labor, John Fitzpatrick, Chicago Federation of Labor v. Swing, 312 U.S. 321, 61 S.Ct. 568, 569, 85 L.Ed. 855, the Supreme Court stated the question before it as follows: 'Is the constitutional guarantee of freedom of discussion infringed by the common law policy of a State forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?' The Court, in its decision, said: 'Such a ban of free communication is inconsistent with the guarantee of freedom of speech. That a State has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular State regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the State. A State cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed to him. The interdependence of economic interest of all engaged in the same industry has become common-

> place. American Foundries vs. Tri-City Council, 257 U.S. 184, 209, 42 S.Ct. 72, 78, 66 L.Ed. 189, 27 A.L.R. 360. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case.' "

Of course, the right of the Defendant in Error to picket in this situation is even stronger than that in the Mason and Dixon Lines case or in the case of American Federation of Labor vs. Swing. In the case at bar it is the elected representatives of theh party engaging in the picketing which has consummated the contract and the contract is being performed by theh expenditure of money paid into the City Treasury by the taxpayers, including those picketing. Furthermore, in the case at bar a contractual obligation was being flagrantly violated. If the picketing Union in the Mason and Dixon case had such an interest as to justify the picketing it is a great deal more apparent that the picketing Union in the case at bar is exercising a constitution protected freedom of speech concerning a matter in which it has a most direct interest.

Had the picket sign spoken an untruth it might possibly have been enjoined; however, there was no contention made in the hearing below that there was anything untrue upon the sign. It was stipulated that said language appeared in the contract and it was not disputed that the employer was violating the contract.

There mere fact that the employer may have suffered some damage because of the advertising of its breach of contract does not make the picketing enjoinable. This Court as well as the Supreme Court of the United States has constantly held that picketing is an inviolate right unless it is done for an illegal purpose.

In the case of *Local Union No. 3871, United Steel Workers of America et al VS. Fortner et al.*, 202 Ga. 206, 42 S.E. 2d, 734, this Court held:

> "Peaceful picketing is a form of speech that cannot be abridged."

This Court held in the case of *Cook vs. Huckabee Transport Corporation*, 215 Ga., 9, as follows:

> "Peaceful picketing is not unlawful unless it is for an illegal purpose. On the contrary, it is authorized under the Constitutional guarantee of free speech."

It is, therefore, apparent that the Defendant in Error was merely exercising its Constitutional rights in publicizing what its own elected representatives were doing with its own tax money.

Aside from the Constitutional issue of freedom of speech, it is respectfully submitted that to have granted the injunction under the facts in this case would have been to infringe upon an area protected by the United States Government through enactment of the National Labor Relations Act Title 29, Section 141, et seq., United States Code Annotated. The stipulation of the parties as to interstate commerce establishes that the employer purchased raw materials, equipment and supplies in a value in excess of $50,000.00 and shipped to said project in Atlanta, Georgia, from points beyond the State of Georgia. The Plaintiff in Error, therefore, meets the National Labor Relations Board's standards for the assumption of jurisdiction.

In the case of *Weber vs. Anheuser Busch, Inc.*, 348 U.S. 468, the Supreme Court of the United States held:

> "1. The Court has ruled that a State may not prohibit the exercise of rights which the Federal Acts protect. Thus, in Hill vs. Florida, 325 U.S. 538, 16 LRRM 734, the State enjoined a labor union from functioning until it had complied with certain statutory requirements. The injunction was invalidated on the ground that the Wagner Act included a 'federally established

right to collective bargaining' with which the injunction conflicted. 'International Union v. O'Brien , 339 U.S. 454, 26 LRRM 2082, involved the strike-vote provisions of a state act which prohibited the calling of a strike until a specific statutory procedure had been followed. The state act was held to conflict not only with the procedure and other requirements of the Taft-Hartley strike provisions but also with the protection afforded by Sec. 7 of that Act. In Amalgamated Association vs. Wisconsin Employment Relations Board, 340 U.S. 383, 27 LRRM 2385, the state court issued an injunction under a statute which made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the state statute was invalid in that it denied a right which Congress had guaranteed under Sec. 7 of the Taft-Hartley Act—the right to strike peacefully to enforce union demands for wages, hours and working conditions. Last Term the Court noted in Garner v. Teamsters Union, 346 U.S. 485, 499, 33 LRRM 2218, that

'The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the National Labor Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state

were to declare picketing free for purposes or by methods which the federal Act prohibits.' "

Aside from the protection granted by the National Labor Relations Act, the subject of this cause has been preempted by enactment of the National Labor Relations Act. In the case of *Meat Cutters vs. Fairlawn Meats, Inc.*, 353 U.S. 20, Supreme Court of the United States, the Court said:

> ". . . The conduct here restrained—an effort by a Union not representing a majority of his employees to compel an employer to agree to a union shop contract, is conduct of which the National Act has taken hold. Sec. 8(b)(2) 61 Stat. 141, U.S.C., Sec. 158 (b)(2).. *Garner v. Teamsters Union*, supra, teaches that in such circumstances a State cannot afford a remedy parallel to that provided by the Act."

Also, see *Building Trade Council v. Garmon*, 353 U.S. 26; *Garner vs. Teamsters Union*, 346 U.S. 161, and *Hotel Union vs. Sax Enterprises, Inc.*, 79 Sup. Court, 273.

To summarize, it is respectfully submitted that the facts in this case clearly establish that the picketing resulted from the breach by the Plaintiff in Error of a provision of its contract with the elected representatives of the parties engaged in the picketing, which contract provision was incorporated in the contract for the protection of the wage standards of all of labor, and in engaging in said picketing the Defend-

ant in Error was merely exercising its rights as an American citizen to publicize what was being done with its own tax money by its own elected Officials. The exercise of this right is fundamental to the Constitutional guarantees of American freedom. In view of the facts of this case it cannot possibly be said that the Trial Court has clearly abused its discretion.

It is, therefore, respectfully submitted that the decision of the Trial Court should be sustained.

Respectfully submitted,

POOLE, PEARCE & HALL
BY: /s/ Edwin Pearce
Edwin Pearce

/s/ John S. Patton
John S. Patton,

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CERTIFICATE OF SERVICE

I hereby certify that I have served five copies of the above Petition for Writ of Certiorari, as required by law, upon Counsel for Defendant in Certiorari, by mailing same, by Registered Mail, on the 2nd day of April, 1962.

John S. Patton

John S. Patton
Of Counsel for Petitioner
in Certiorari.